

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
CRIMINAL APPEAL NO.1276 OF 2003**

Pandurang Hari Shelar
presently lodged at
Yerawada Central Prison,
Pune.

.... Appellant
(Ori. Accused)

- Versus -

The State of Maharashtra

.... Respondent

Ms Ameeta Kuttikrishnan, Advocate, appointed
for the Appellant/Accused.

Shri V.B. Konde-Deshmukh, Addl. Public
Prosecutor, for the Respondent-State.

CORAM: R.M.S. KHANDEPARKAR &
Smt. V.K. TAHILRAMANI, JJ.

DATED: JULY 23, 2007

ORAL JUDGMENT (Per Smt.V.K.Tahilramani, J.):

1. Through this appeal, the appellant/original accused has challenged the judgment and order dated 19th March, 2003 passed by the learned Ad hoc Additional Sessions Judge, Pune in Sessions Case No.373 of 2001. By the said judgment and order, the learned Sessions Judge convicted the appellant under Section 302 of the Indian Penal Code (for short, "IPC") and sentenced him to imprisonment for life and to pay fine of Rs.500/- i.d. to suffer R.I. for three months.

2. The prosecution story, briefly stated, is as under:

The deceased Mangal was the second wife of the appellant. The marriage of Mangal and the appellant took place about 17-18 years prior to the incident. PW-2 Jayshri is the married daughter of the appellant from his first wife. She used to visit the house of her father i.e., the appellant frequently. The appellant suspected the character of his wife Mangal and on account of this there used to be frequent quarrels between the appellant and Mangal. Mangal used to inform others including Jayshri that she was being ill-treated by the appellant. Few days prior to the incident, Jayshri came to reside with the appellant and Mangal. The incident took place in the intervening night between 19th and 20th of April, 2001, at about 1-1:15 a.m.. The house of the appellant consisted of two rooms. The appellant, Mangal, Jayshri, her minor son and others were sleeping in one room. Jayshri saw her father cutting the throat of Mangal with a knife. On seeing this, Jayshri shouted loudly whereupon the appellant put down the knife and ran away from the place of the incident. Thereafter, Jayshri, PW-1 Vinod who is the son of the appellant and PW-3 Bharat, who was a the neighbour, went to the police station. At that time, the appellant was already in the police station; his clothes and hands were blood stained. After the incident was informed to the police, FIR came to be lodged and the investigation commenced. An inquest

panchnama was drawn and the body was referred for post-mortem. The post-mortem was conducted by PW-8 Dr. Shrikant Chandekar. PW-8 Dr. Chandekar found the following external injuries on the body of Mangal:

1. Incised injury, right sub-mandibular region middle, 0.8 x 2.5 cm. skin deep with flap formation.

2. Transverse incised injury over anterior neck going through lower part of thyroid cartilage (below vocal cords) measuring 7.5 cm gaping depth spine expose in mid-region.

Dr. Chandekar observed the following internal injuries corresponding to above injuries.

1. Strap muscles of neck bilaterally showed clean cut injury with retraction, bilaterally carotic sheaths along with their vessels showed corresponding clean cut injury thyroid cartilage alae (lower part), cricoid cartilage (lower part) showed clean cut injury with total separation of

upper respiratory tract. Thyroid gland showed corresponding clean cut injury soft tissues and vessels were cut.

3. Contused abrasions over right cheek 1-5 x 5 cm and over right pre-auricular area 1 x 1cm."

After completion of the investigation, charge-sheet came to be filed and in due course, the case was committed to the Court of Sessions.

3. Charge came to be framed against the appellant under Section 302 of IPC for causing the death of his wife Mangal by cutting her throat with a knife. The appellant pleaded not guilty to the said charge and claimed to be tried. The defence of the appellant was that of total denial and false implication. After going through the evidence adduced by the prosecution, the learned Sessions Judge convicted and sentenced the appellant, as stated in para 1 above. Hence, this appeal.

4. We have heard Ms Ameeta Kuttikrishnan, learned Advocate for the appellant and Shri V.B. Konde-Deshmukh, Addl. Public Prosecutor, for the

respondent-State. We have also perused the judgment and order passed by the learned Sessions Judge as well as the records pertaining to the present case. After giving our anxious consideration to the matter, we are of the opinion that this appeal deserves to be dismissed.

5. So far as the involvement of the appellant in the incident is concerned, we are satisfied that it has been established to the hilt through the credible ocular account rendered by PW-2 Jayshri. Jayshri has stated that she had come to reside with her father i.e., the appellant and her step-mother Mangal a few days prior to the incident. Her father was doubting the character of her step-mother i.e. Mangal. Mangal used to tell her that Mangal was being ill-treated by the appellant. Quarrel had taken place between the appellant and Mangal and Jayshri had tried to pacify the quarrel. However, both of them did not listen to her. At the time when the incident took place, the appellant, Mangal, Jayshri and her minor son were sleeping in the same room. PW-2 Jayshri saw her father i.e., the appellant cutting the throat of her step-mother i.e. Mangal with a knife. On seeing this, Jayshri shouted loudly whereupon her father threw down the knife and ran away from the place of the incident. On hearing her shouts, her step-brother PW-1 Vinod and some neighbours, including PW-3 Bharat came to

the spot. Then all of them went to the police station to inform about the incident. Jayshri has identified the knife (Article-1) before the Court as the same knife with which her father had assaulted her step-mother.

6. We have closely examined the ocular account furnished by Jayshri and we find it inspires confidence. The manner of assault as disclosed by Jayshri is corroborated by the external and internal injuries found on the person of Mangal by PW-8 Dr. Shrikant Chandekar. We have earlier set out the injuries sustained by Mangal in para 2 above. Dr. Chandekar, in his evidence, has further stated that Mangal had died due to the cut injury to the throat. He has also stated that the injuries sustained by Mangal are possible by the knife Article 1. Dr. Chandekar has further stated that the injuries which were noticed by him were sufficient in the ordinary course of nature to cause death. Besides this, the C.A. report Exhibit-29 shows that the blood group on the clothes of the deceased Mangal was of "B" group. So also, the stains of blood on the clothes of the appellant and weapon of assault i.e. the knife was also that of human blood of "B" group. The quilt and the pillow on which Mangal was found lying were also found stained with blood of "B" group. The appellant has not furnished any explanation for the blood stains on his clothes of "B" group. In our view, the blood

stains of "B" group on the knife and especially the clothes of the appellant would also be a circumstance which would go against the appellant.

7. The evidence of PW-2 Jayshri also receives some support from the evidence of her step-brother PW-1 Vinod and from the evidence of PW-3 Bharat, who was their neighbour. PW-1 Vinod has stated that his father had suspicion with regard to the character of his mother Mangal and therefore there used to be quarrels between them. Vinod has further stated that during the quarrels his father used to give threats to Mangal that he would kill her. Vinod has further stated that on the day of the incident he had gone to the house of his maternal uncle for sleeping at about 9:30 p.m.. At about 1-1:15 a.m. he heard shouts of his step-sister Jayshri and hence Vinod and some others rushed there. He saw cut injury on the neck of his mother Mangal and Jayshri told him that the appellant had cut the throat of Mangal. Then Vinod left for the police station along with PW-3 Bharat. When they reached the police station, they saw that the appellant was already in the police station and his clothes and hands were blood stained.

8. PW-3 Bharat has stated that the appellant is his neighbour and hence he knew him. There used to be quarrels between the appellant and his wife Mangal. On

20-4-2001, at about 1:15 a.m. PW-1 Vinod called out to him. Hence he went running to the house of Vinod. Vinod told him that his father had cut the throat of his mother. He saw Mangal lying on the bed and her throat was cut. He along with Vinod and others went to the police station where they saw that the appellant was already standing there and his clothes and hands were blood stained. Thus it is seen that the evidence of PW-2 Jayshri is corroborated not only by the medical evidence but it also receives support from the evidence of PW-1 Vinod and PW-3 Bharat.

9. It should also be borne in mind that PW-1 Vinod, PW-2 Jayshri and PW-3 Bharat are natural witnesses in as much as PW-2 Jayshri being the daughter of the appellant was staying in the house of the appellant, PW-1 Vinod being the son of the appellant would come to the house of his father and PW-3 Bharat being a neighbour, it was easy for him to reach the spot of the incident on hearing the shouts. It should also be borne in mind that PW-2 Jayshri and PW-1 Vinod are the daughter and the son of the appellant respectively and they will not falsely implicate the appellant. Unless the appellant had actually assaulted the deceased Mangal in the manner stated by PW-2 Jayshri, she would not have stated so. Thus, in our view, the learned Sessions Judge was absolutely justified in concluding that the appellant

had assaulted Mangal in the manner alleged by PW-2 Jayshri.

10. This leaves us with only one question, namely that of the offence. The learned Sessions Judge has convicted the appellant for the offence under Section 302 of the IPC. However, Ms Ameeta Kuttikrishnan, the learned Advocate appearing for the appellant, has submitted that the learned Sessions Judge erred in convicting the appellant under Section 302 and instead he should have convicted the appellant under Section 304-II of the IPC. In support of her contention, she has placed reliance on various decisions. The first decision on which reliance is placed is in the case of **Mavila Thamban Nambiar v. State of Kerala**, reported in 1997 Cri.L.J. 831. Ms Ameeta Kuttikrishnan submitted that in the said case though the accused had given a blow with a pair of scissors on the vital part of the body, yet the conviction under Section 302 was altered to one under Section 304-II. We have carefully perused the said decision and we find that in the said case the accused had given just one blow on the body of the deceased whereas in the present case three injuries have been inflicted by the appellant on his wife Mangal. Out of the three injuries, two of the injuries are on the neck. Besides, the injuries on the neck one injury was also found on the cheek of Mangal. Thus, this decision

can have no application to the facts of the present case.

11. Ms Ameeta Kuttikrishnan submitted that in the present case if the appellant had wanted to murder Mangal, he would have done so when no one was present and he would not have inflicted blows on Mangal in the presence of PW-2 Jayshri and others. The second decision on which reliance is placed is in the case of **State of Bihar v. Ramnath Prasad and others**, reported in (1998) 9 SCC 49, wherein the case of the prosecution was that the accused had given some 'prasad', which contained poison, to the deceased. Thereafter, the deceased started vomiting and he died thereafter. In the said case, the Supreme Court held that there was no motive to induce the accused to kill the deceased. It was further observed that if really there was any intention on the part of the accused to kill the deceased, the accused would not have given poisonous substance so openly and in the presence of others. As far as the present case is concerned, the motive has clearly been brought on record through the evidence of PW-1 Vinod and PW-2 Jayshri. There used to be frequent quarrels between the appellant and his wife Mangal. The appellant suspected the character of Mangal. Hence in such a case the said decision would be of no avail to the appellant.

12. Lastly, Ms Ameeta Kuttikrishnan placed reliance on the decision of this Court in the case of **Gopal Sakharam Jadhav v. State of Maharashtra**, reported in 2000 (1) Mh.L.J. 242. In the said case, the accused had inflicted fist blows and kick blows on the deceased and thereafter he picked up a brick and assaulted the deceased with the brick on the chest. In such circumstances, it was held that the case would not fall under Section 302 of the IPC but would fall under Section 304-II of the IPC. In the present case, the appellant had assaulted the deceased with a deadly weapon like knife. The assaults were made on the vital parts of the body. Two of the injuries were inflicted with knife on the neck of the deceased. The second injury on the neck was 7.5 cm in length and the cut was so deep that the spine was exposed. This particular injury inflicted on the neck was such that it almost cut the neck of Mangal through and through. Looking to this fact, we have no hesitation in coming to the conclusion that the case of the appellant is squarely covered by Section 302 of the IPC.

13. In the result, the judgment and order dated 19th March, 2003 passed by the learned Sessions Judge is confirmed. The appellant who is in jail shall serve out his sentence. The appeal is dismissed.

14. At this stage, we must record our appreciation for Ms Ameeta Kuttikrishnan, the learned Advocate appearing for the appellant. We find that she meticulously prepared the matter and she has ably argued the matter. We also record our appreciation for the learned A.P.P. Shri V.B. Konde-Deshmukh for very ably conducting the matter.

(Smt.V.K.Tahilramani, J.)

(R.M.S.Khandeparkar, J.)

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